IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

MACA.No. 2079 of 2006

OPMV.493/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANTS/PETITIONERS:

1. PRAMEELA, W/O.MANOJKUMAR,
   LAKSHMI VILAS (NEDUMBILLY) KODANADU VILLAGE,
   KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.

2. ABHIJITH.M. MENON (MINOR) REP. BY GUARDIAN
   MOTHER PRAMEELA, DO. DO.

3. AMRUTHA.M. MENON (MINOR), DO. DO. DO.

4. LEELA B.K.NAIR, W/O.K.BALAKRISHNAN NAIR, DO. DO.

BY ADV. SRI.C.CHANDRASEKHARAN
SRI.P.VISWANADHA MENON

RESPONDENTS/RESPONDENTS:

1. JOHN KURIAN, S/O.KURIAN, KALAKKUDY
   HOUSE, KOTHAMANGALAM VILLAGE,
   INJIYOOR KARA, ERNAKULAM DISTRICT.

2. SABU JOHNY, PARTNER, M/S.E.V. MATHAI
   & SONS, KOTHAMANGALAM.

3. NATIONAL INSURANCE CO.LTD.,
   KOLENCHERRY BRANCH, P.B.NO.6,
   MEDICAL MISSION JUNCTION,
   P.O.KOLENCHERRY, ERNAKULAM DISTRICT.

R3 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.A.C.A.No. 2079 of 2006

JUDGMENT

Koshy, J.

A 33 year old young man died in an accident, when a lorry, while overtaking a tanker lorry, hit on the motor cycle which he was riding. It is stated that the back wheel of the lorry ran over his head. A claim petition was filed by his wife aged 27, minor son and a sixty days old daughter along with the aged mother for compensation of Rupees seven lakhs. The Tribunal calculated a total compensation of Rs.2,98,800/-. The Tribunal found that there was 25% contributory negligence on the part of the motorcyclist. Therefore, after deducting 25% for contributory negligence, the Tribunal granted a compensation of Rs.2,24,100/-. The finding of contributory negligence and quantum of compensation are disputed in this appeal. Respondents 1 and 2 remained ex parte also. Only

the Insurance Company filed written statement and contested the case.

2. Exhibit A1 is the certified copy of FIR. Exhibit A2 is the certified copy of charge sheet. Exhibit A3 is the certified copy of scene mahazar. Exhibit A4 is the AMVI's report. The police charge sheeted the driver of the lorry for negligent driving. But, the scene mahazar as well as the charge sheet would show that the accident occurred when the offending lorry insured by the third respondent Insurance Company was over taking a tanker lorry. The width of the road is 8.01 metres. The accident occurred at 4.56 metres away from the side towards west. That means, the motor cycle was almost in the middle of the road. He had crossed over the middle line when the accident occurred. However, as the police charge sheeted the driver of the lorry, who was overtaking a tanker lorry in high speed negligently, 75% negligence was fixed on the lorry driver and 25% on the motorcyclist. In

the absence of any oral evidence, from the scene mahazar, charge sheet as well as the attending circumstances, the finding of the Tribunal regarding contributory negligence on the part of the motorcyclist cannot be interfered with.

3. The next question is regarding the quantum of compensation. According to the claimants, the deceased was getting Rs.5,000/- per month and he was conducting a provision store. The details of the income was not given. Therefore, only Rs.1,800/- was taken by the Tribunal as the monthly income. The contention of the appellants is that in the decision in **New India Assurance Co. Ltd. v. Kalpana (Smt)** ((2007)3 SCC 538) the Apex Court assessed Rs.3,000/- as the monthly loss of dependency, after deducting the amount for personal expenses, for a person aged between 30-35 years, in the absence of any evidence regarding income, as he was maintaining a family. Fixation of monthly income will be different depending upon the facts

and circumstances of each case. In the above case, it is not stated that in all cases, in the absence of data, the monthly loss of dependency shall be fixed at Rs.3,000/-, if the accident victim's age is between 30 and 35. It is contended that the deceased was maintaining a family. He had two minor children, one was in the infant stage and his mother was paralysed. Therefore, a higher income should be taken. Considering the circumstances of the case, we are fixing Rs.3,000/- as the monthly income and after deducting one third Rs.2,000/- as monthly loss of dependency. The Tribunal has taken 17 as the multiplier, taking guidelines from the second schedule. In the circumstances, we refer to the three member Bench decision of the Supreme Court in **Smt.Supe Dei v. National Insurance Company Ltd.** (JT 2002 (Suppl. 1) SC 451). Even though it is contended that considering the present life span of the people, a higher multiplier has to be taken, we are not enhancing the same. If that be so, the

total compensation due will be 2000 x 12 x 17 = 4,08,000/-. The Tribunal has awarded Rs.2,44,800/- for loss of dependency. The balance will be Rs.1,63,200/-. From that 25% has to be deducted. Therefore, the balance compensation payable will be Rs.1,22,400/-. It is contended that compensation granted under other heads are very meagre. We are not enhancing the compensation in other respects, in view of the enhancement granted for loss of dependency. The above amount of Rs.1,22,400/- should be deposited by the third respondent Insurance Company with 7% interest from the date of application till its deposit. On deposit of the above amount, Rs.15,000/- shall be given to the fourth appellant, the mother of the deceased. Rs.60,000/- shall be given to the first appellant, the widow of the deceased. The entire balance amount, including interest, shall be deposited in equal proportion in a nationalised bank in the names of second and third appellants. The second

respondent shall be allowed to withdraw the amount when he attains the age of 20 and the third appellant shall be allowed to withdraw the amount at the time of her marriage.

The appeal is allowed in part.

(J.B.Koshy, Judge)

20th July, 2007

(K.P.Balachandran, Judge)

tkv